IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 6010 of 1992

AKHTAR HUSSAIN
V/S
STATE & ANR

Mr. MR SINGHVI, for the appellant / petitioner

Mr. SS LADRECHA, AGA, for the respondent

Date of Order : 20.4.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner has challenged the order Annexure-6, being dated 7/30.10.1992, and has also prayed for a direction to make determination of vacancies in terms of Rule 9 of Rajasthan Services of Engineers and Allied Posts(Public Health Branch) Rules, 1968, herein after to be referred to as 'the rules'.

The allegations of the petitioner are, that he possesses the academic qualification of diploma in Civil Engineering, that he came to be appointed as Sub Engineer, vide order dt. 7.9.1965, and was confirmed as such. It is alleged that on completion of 14 years of service, he becomes eligible for appointment as Assistant Engineer. Then it is alleged, that vide order Annexure-2 dt. 19.11.1979, the petitioner was promoted temporarily on the post of Assistant Engineer for a period of four months, or

till duly selected candidates are made available. In this list Annexure-2, the petitioner's name finds place at S.No. 27. Further case of the petitioner is, that thereafter, there was a regular determination of vacancies, and meeting of D.P.C. was convened, which considered the candidature of the petitioner also, and accordingly, vide order dt. 20.2.1982 Annexure-3, he was promoted as Assistant Engineer. According to the petitioner, the expression used being “temporary/officiating” is of no consequence, and cannot alter the nature of the promotion, as Annexure-3 specifically recites, the promotion to have been made under Rule 25, of the Rules. It is then alleged, that thereafter a final seniority list of Assistant Engineers was published, being Annexure-4, wherein petitioner's name finds place at S.No. 77. Then, review D.P.C. appears to have been convened, for the vacancies of the year 1973 to 1981-82, and a further D.P.C. for the vacancies of the year 1982-83 to 1991-92. According to the petitioner's information, the vacancies of all these years were clubbed together, and one D.P.C. was held, which is violative of Rule 9 and Rule 25(11-A), and has brought about discrimination. It is then alleged, that on the recommendations of review D.P.C., the order dt. 13.9.1992 has been issued, making promotions of certain persons as Assistant Engineers, which order has been produced as Annexure-5, wherein the petitioner's name is not included, while the persons finding place at S.No. 123 onwards, of

Annexure-4, have been promoted. Then, vide order Annexure-6, the petitioner has been ordered to be reverted, on the post of Sub Engineer, on the ground, that the recommendations, in his case, is kept in sealed cover. It is alleged, that there is hardly any occasion for keeping the recommendations in sealed cover, because he became due for promotion much prior to charge-sheet, apart from the fact, that mere service of charge-sheet, cannot be a fate accompli, for a person. It is also contended, that he was promoted against the vacancies of the year 1982, therefore, now he cannot be reverted in the garb of 'pending disciplinary proceedings'. Regarding charge-sheet, it is alleged, that the petitioner was placed under the suspension, vide order dt. 28.7.1984, and despite it being revoked, vide order dt. 19.2.1986, he was served with a memorandum, and charge-sheet dt. 5.2.1986, being Annexure-8. However thereafter, an order was issued on 29.5.1990, being Annexure-7, under Rule 18 of the C.C.& A Rules. According to the petitioner, on issuance of order Annexure-7 under Rule 18, fresh charge-sheet was required to be served, and the earlier charge-sheet, Annexure-8, lost its efficacy, and since no fresh charge sheet has so far been served, his result need not be kept under sealed cover, either. It is inter alia with these averments, that the above reliefs have been claimed.

A reply has been filed by the respondents,

contending inter alia, that it is the right of the employee, only to have his candidature considered, and if the candidature has been considered, on account of misleading of facts, or detailed facts with full service record being not placed before D.P.C., then it can be reviewed. Then, giving parawise reply, it was submitted, that on completion of 14 years of service he only became eligible, and vide Annexure-3 he was promoted, only on temporary urgent basis, which could be cancelled any time by the appointing authority, and no right can be claimed on this basis, more so when, Annexure-3 clearly stipulates, that the promotion was to remain in force till selected candidates are made available. It is then pleaded, that the appointment order to the post of Assistant Engineer was temporary in nature, and for making permanent appointment, the D.P.C. was required to make revised consideration, and if such D.P.C. approved the previous selection, then the candidates are entitled to hold the post, as the previous appointments were made under Rule 25 of the Rules, which provides for arrangement on temporary, or officiating basis only. Regarding clubbing of vacancies, it was pleaded, that the vacancies were considered for respective years, and employees had been considered accordingly. The selection exercise resulting in Annexure-5, was maintained, by contending, that on the final adjudgment, the D.P.C./review D.P.C. did not find the petitioner suitable, on account of administrative reasons, as departmental enquiry was pending

against the petitioner. Various other pleadings were taken, and it was contended, that on account of issuance of Annexure-7, fresh charge sheet is not required to be given.

Thus, in substance the contention of the respondent is, that the promotion made vide Annexure-3, was made under Rule 25, by way of urgent temporary promotion, and no right can be claimed by the petitioner on that basis.

I have heard learned counsel for the parties on the controversy, and have perused the documents on record so also have gone through the relevant rules.

A combined reading of the two rules, being Rule 25, and 28, does show, that urgent/temporary promotion can be made under rule 28, in certain circumstances, and for a specified period of time, and for making promotion no D.P.C. is required to be held, while rule 25 provides for making regular promotion, and for that apart from the requirement of D.P.C., it lays down a detailed and complete procedure, including making provision for the the review D.P.C., in certain circumstances, and also makes various other relevant provisions in that regard, and significantly, that rule 25 does not at all even talk about any urgent/temporary promotion.

In this background a look at Annex. 3 shows, that thereby the promotion was made on the recommendations of D.P.C., and was made under Rule 25, as contradistinguished from the powers under Rule 28, whereunder no D.P.C. is required. Likewise, significantly, the petitioner was earlier promoted, probably exercising powers under Rule 28, vide Annexure-2, in the year 1979. Therefore, a collective reading of Annexure-2 and 3 also makes it clear, that the respondents are very much clear within themselves, about the distinction, between the promotions being made under Rule 25 and 28. That being the position, since the petitioner was promoted under Rule 25, vide Annexure-3, he could not be ordered to be reverted, or subjected to consideration of review D.P.C., or other D.P.C., on the assumed ground, of promotion having been made vide Annexure-3, on temporary/officiating basis. It is not the case of the respondents, that at the time, when candidature of the petitioner was considered, before passing of order Annexure-3, any material regarding the petitioner was concealed, or did not come to the notice of the D.P.C., or that any other ground contemplated by rule 25(11-A) of the rules existed.

In that view of the matter, even without going into the controversy, about the requirement of issuance of fresh charge-sheet, consequent upon issuance of order

Annexure-7, even a look at Annexure-8, shows that, that was issued, only in the year 1986, while the order Annexure-3 is of the year 1982. In such circumstances, the charge-sheet Annexure-8, could possibly not be a subject matter, required to be considered by the D.P.C., who recommended the case of the petitioner, consequent upon which, the order Annexure-3 was passed.

Thus, the whole action of the respondents, culminating into Annexure-6, clearly appears to be an out come of misconception, and therefore cannot be sustained.

It is again a different story, that on filing of this writ petition, vide order dt. 12.11.1992, the operation of impugned order was ordered to be stayed by this Court, and that stay was subsequently confirmed by this Court, vide order dt. 6.4.1993. Thus, as a matter of fact, this order Annexure-6 has not at all come into effect. Then, as I find from Annexure-4, that the date of birth of the petitioner is 27.11.1944, and thus, by now, obviously, the petitioner must have retired, obviously enjoying the benefits, bereft of Annexure-6.

In these circumstances, in my view, the writ petition is required to be allowed, and the order Annexure-6 is required to be quashed. The writ petition is accordingly allowed, and the order Annexure-6, is quashed.

The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/